
By: **Delegate Giannetti**

Introduced and read first time: February 9, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Evidence - Tests for Alcohol, Drugs, or**
3 **Controlled Dangerous Substances**

4 FOR the purpose of repealing the right of a person under certain circumstances to not
5 be compelled to submit to a certain test for alcohol, drugs, or controlled
6 dangerous substances under certain circumstances; repealing a prohibition
7 against an inference or presumption concerning guilt or innocence arising
8 because of a person's refusal to submit to a certain test for alcohol, drugs, or
9 controlled dangerous substances; making a refusal of a person to submit to a
10 certain test for alcohol, drugs, or controlled dangerous substances under certain
11 circumstances a misdemeanor; providing for certain penalties; requiring the
12 Motor Vehicle Administration to assess a certain number of points against the
13 driver's license of a person who is convicted of refusing to submit to a certain
14 test for alcohol, drugs, or controlled dangerous substances; prohibiting a court
15 from staying the entry of judgment and placing a defendant on probation if the
16 defendant has been convicted of or placed on probation for certain offenses
17 within a certain number of years; and generally relating to a person's refusal to
18 submit to a certain test for alcohol, drugs, or controlled dangerous substances
19 for certain alcohol- or drug-related driving offenses under certain
20 circumstances.

21 BY repealing and reenacting, with amendments,
22 Article - Courts and Judicial Proceedings
23 Section 10-309(a)
24 Annotated Code of Maryland
25 (1998 Replacement Volume and 2000 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article - Transportation
28 Section 16-205.1(a)(2),(b),(c), and (d)
29 Annotated Code of Maryland
30 (1999 Replacement Volume and 2000 Supplement)

31 BY repealing and reenacting, without amendments,

1 Article - Transportation
 2 Section 16-205.1(g)
 3 Annotated Code of Maryland
 4 (1999 Replacement Volume and 2000 Supplement)

5 BY adding to
 6 Article - Transportation
 7 Section 16-205.1(o), 16-402(a)(37), and 27-101(v)
 8 Annotated Code of Maryland
 9 (1999 Replacement Volume and 2000 Supplement)

10 BY repealing and reenacting, with amendments,
 11 Article - Criminal Procedure
 12 Section 6-220(c)(1)
 13 Annotated Code of Maryland
 14 (As enacted by Chapter _____(S.B.1) of the Acts of the General Assembly of 2001)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Courts and Judicial Proceedings**

18 10-309.

19 (a) (1) (i) [Except as provided in § 16-205.1(c) of the Transportation
 20 Article, a] A person may [not] be compelled to submit to a test or tests provided for
 21 in this subtitle.

22 (ii) Evidence of a test or analysis provided for in this subtitle is not
 23 admissible in a prosecution for a violation of § 16-113 or § 21-902 of the
 24 Transportation Article, § 8-738 of the Natural Resources Article, or Article 27, § 388,
 25 § 388A, or § 388B of the Code if obtained contrary to the provisions of this subtitle.

26 (2) [(i) No inference or presumption concerning either guilt or
 27 innocence arises because of refusal to submit.

28 (ii)] The fact of refusal to submit is admissible in evidence at the
 29 trial.

30 **Article - Transportation**

31 16-205.1.

32 (a) (2) Any person who drives or attempts to drive a motor vehicle on a
 33 highway or on any private property that is used by the public in general in this State
 34 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
 35 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person

1 should be detained on [suspicion] REASONABLE GROUNDS of driving or attempting to
 2 drive while intoxicated, while under the influence of alcohol, while so far under the
 3 influence of any drug, any combination of drugs, or a combination of one or more
 4 drugs and alcohol that the person could not drive a vehicle safely, while under the
 5 influence of a controlled dangerous substance, in violation of an alcohol restriction, or
 6 in violation of § 16-813 of this title.

7 (b) (1) [Except as provided in subsection (c) of this section, a person may not
 8 be compelled to take a test. However, the] THE detaining officer shall advise the
 9 person that, on receipt of a sworn statement from the officer that the person was so
 10 charged and refused to take a test, or was tested and the result indicated an alcohol
 11 concentration of 0.10 or more, the Administration shall:

12 (i) In the case of a person licensed under this title:

13 1. For a test result indicating an alcohol concentration of
 14 0.10 or more at the time of testing:

15 A. For a first offense, suspend the driver's license for 45 days;
 16 or

17 B. For a second or subsequent offense, suspend the driver's
 18 license for 90 days; or

19 2. For a test refusal:

20 A. For a first offense, suspend the driver's license for 120
 21 days; or

22 B. For a second or subsequent offense, suspend the driver's
 23 license for 1 year;

24 (ii) In the case of a nonresident or unlicensed person:

25 1. For a test result indicating an alcohol concentration of
 26 0.10 or more at the time of testing:

27 A. For a first offense, suspend the person's driving privilege
 28 for 45 days; or

29 B. For a second or subsequent offense, suspend the person's
 30 driving privilege for 90 days; or

31 2. For a test refusal:

32 A. For a first offense, suspend the person's driving privilege
 33 for 120 days; or

34 B. For a second or subsequent offense, suspend the person's
 35 driving privilege for 1 year; and

1 (iii) In addition to any applicable driver's license suspensions
2 authorized under this section, in the case of a person operating a commercial motor
3 vehicle who refuses to take a test:

4 1. Disqualify the person's commercial driver's license for a
5 period of 1 year for a first offense, 3 years for a first offense which occurs while
6 transporting hazardous materials required to be placarded, and disqualify for life for
7 a second or subsequent offense which occurs while operating any commercial motor
8 vehicle; or

9 2. If the person is licensed as a commercial driver by another
10 state, disqualify the person's privilege to operate a commercial motor vehicle and
11 report the refusal and disqualification to the person's resident state which may result
12 in further penalties imposed by the person's resident state.

13 (2) Except as provided in subsection [(c)] (D) of this section, if a police
14 officer stops or detains any person who the police officer has reasonable grounds to
15 believe is or has been driving or attempting to drive a motor vehicle while intoxicated,
16 while under the influence of alcohol, while so far under the influence of any drug, any
17 combination of drugs, or a combination of one or more drugs and alcohol that the
18 person could not drive a vehicle safely, while under the influence of a controlled
19 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813
20 of this title, and who is not unconscious or otherwise incapable of refusing to take a
21 test, the police officer shall:

22 (i) Detain the person;

23 (ii) [Request that] DIRECT the person [permit a test to be taken]
24 TO TAKE A TEST; and

25 (iii) Advise the person of the administrative sanctions that shall be
26 imposed for refusal to take the test, including ineligibility for modification of a
27 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
28 section, and for test results indicating an alcohol concentration of 0.10 or more at the
29 time of testing.

30 (3) If the person refuses to take the test or takes a test which results in
31 an alcohol concentration of 0.10 or more at the time of testing, the police officer shall:

32 (i) Confiscate the person's driver's license issued by this State;

33 (ii) Acting on behalf of the Administration, personally serve an
34 order of suspension on the person;

35 (iii) Issue a temporary license to drive;

36 (iv) Inform the person that the temporary license allows the person
37 to continue driving for 45 days if the person is licensed under this title;

38 (v) Inform the person that:

1 1. The person has a right to request, at that time or within
2 10 days, a hearing to show cause why the driver's license should not be suspended
3 concerning the refusal to take the test or for test results indicating an alcohol
4 concentration of 0.10 or more at the time of testing, and the hearing will be scheduled
5 within 45 days; and

6 2. If a hearing request is not made at that time or within 10
7 days, but within 30 days the person requests a hearing, a hearing to show cause why
8 the driver's license should not be suspended concerning the refusal to take the test or
9 for test results indicating an alcohol concentration of 0.10 or more at the time of
10 testing will be scheduled, but a request made after 10 days does not extend a
11 temporary license issued by the police officer that allows the person to continue
12 driving for 45 days;

13 (vi) Advise the person of the administrative sanctions that shall be
14 imposed in the event of failure to request a hearing, failure to attend a requested
15 hearing, or upon an adverse finding by the hearing officer; and

16 (vii) Within 72 hours after the issuance of the order of suspension,
17 send any confiscated driver's license, copy of the suspension order, and a sworn
18 statement to the Administration, that states:

19 1. The officer had reasonable grounds to believe that the
20 person had been driving or attempting to drive a motor vehicle on a highway or on
21 any private property that is used by the public in general in this State while
22 intoxicated, while under the influence of alcohol, while so far under the influence of
23 any drug, any combination of drugs, or a combination of one or more drugs and
24 alcohol that the person could not drive a vehicle safely, while under the influence of a
25 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
26 § 16-813 of this title;

27 2. The person refused to take a test when [requested]
28 DIRECTED TO TAKE A TEST by the police officer or the person submitted to the test
29 which indicated an alcohol concentration of 0.10 or more at the time of testing; and

30 3. The person was fully advised of the administrative
31 sanctions that shall be imposed, including the fact that a person who refuses to take
32 the test is ineligible for modification of a suspension or issuance of a restrictive
33 license under subsection (n)(1) or (2) of this section.

34 (c) (1) If a person is [involved in a motor vehicle accident that results in the
35 death of, or a life threatening injury to, another person and the person is] detained by
36 a police officer who has reasonable grounds to believe that the person has been
37 driving or attempting to drive while intoxicated, while under the influence of alcohol,
38 while so far under the influence of any drug, any combination of drugs, or a
39 combination of one or more drugs and alcohol that the person could not drive a vehicle
40 safely, while under the influence of a controlled dangerous substance, or in violation of
41 § 16-813 of this title, the person shall be required to submit to a test, as directed by
42 the officer.

1 (2) If a police officer directs that a person be tested, then the provisions
2 of § 10-304 of the Courts and Judicial Proceedings Article shall apply.

3 (3) Any medical personnel who perform any test required by this section
4 are not liable for any civil damages as the result of any act or omission related to such
5 test, not amounting to gross negligence.

6 (d) (1) If a police officer has reasonable grounds to believe that a person has
7 been driving or attempting to drive a motor vehicle while intoxicated, while under the
8 influence of alcohol, while so far under the influence of any drug, any combination of
9 drugs, or a combination of one or more drugs and alcohol that the person could not
10 drive a vehicle safely, while under the influence of a controlled dangerous substance,
11 or in violation of § 16-813 of this title, and if the police officer determines that the
12 person is unconscious or otherwise incapable of refusing to take a test, the police
13 officer shall:

14 (i) Obtain prompt medical attention for the person;

15 (ii) If necessary, arrange for removal of the person to a nearby
16 medical facility; and

17 (iii) If a test would not jeopardize the health or well-being of the
18 person, direct a qualified medical person to withdraw blood for a test.

19 (2) If a person regains consciousness or otherwise becomes capable of
20 refusing before the taking of a test, the police officer shall follow the procedure set
21 forth in subsection (b) or SUBSECTION (c) of this section.

22 (g) (1) An initial refusal to take a test that is withdrawn as provided in this
23 subsection is not a refusal to take a test for the purposes of this section.

24 (2) A person who initially refuses to take a test may withdraw the initial
25 refusal and subsequently consent to take the test if the subsequent consent:

26 (i) Is unequivocal;

27 (ii) Does not substantially interfere with the timely and efficacious
28 administration of the test; and

29 (iii) Is given by the person:

30 1. Before the delay in testing would materially affect the
31 outcome of the test; and

32 2. A. For the purpose of a test for determining alcohol
33 concentration, within 2 hours of the person's apprehension; or

34 B. For the purpose of a test for determining the drug or
35 controlled dangerous substance content of the person's blood, within 4 hours of the
36 person's apprehension.

1 (3) In determining whether a person has withdrawn an initial refusal for
 2 the purposes of paragraph (1) of this subsection, among the factors that the
 3 Administration shall consider are the following:

4 (i) Whether the test would have been administered properly:

5 1. For the purpose of a test for determining alcohol
 6 concentration, within 2 hours of the person's apprehension; or

7 2. For the purpose of a test for determining the drug or
 8 controlled dangerous substance content of the person's blood, within 4 hours of the
 9 person's apprehension;

10 (ii) Whether a qualified person, as defined in § 10-304 of the
 11 Courts Article, to administer the test and testing equipment were readily available;

12 (iii) Whether the delay in testing would have interfered with the
 13 administration of a test to another person;

14 (iv) Whether the delay in testing would have interfered with the
 15 attention to other duties of the arresting officer or a qualified person, as defined in §
 16 10-304 of the Courts Article;

17 (v) Whether the person's subsequent consent to take the test was
 18 made in good faith; and

19 (vi) Whether the consent after the initial refusal was while the
 20 person was still in police custody.

21 (4) In determining whether a person has withdrawn an initial refusal for
 22 the purposes of paragraph (1) of this subsection, the burden of proof rests with the
 23 person to establish by a preponderance of the evidence the requirements of paragraph
 24 (2) of this subsection.

25 (O) IF A POLICE OFFICER DIRECTS A TEST OF A PERSON TO BE TAKEN UNDER
 26 SUBSECTION (B) OF THIS SECTION OR UNDER SUBSECTION (C) OF THIS SECTION, THE
 27 PERSON MAY NOT REFUSE TO TAKE A TEST.

28 16-402.

29 (a) After the conviction of an individual for a violation of Article 27, § 388, §
 30 388A, or § 388B of the Code, or of the vehicle laws or regulations of this State or of any
 31 local authority, points shall be assessed against the individual as of the date of
 32 violation and as follows:

33 (37) REFUSAL TO TAKE A TEST UNDER § 16-205.1 (O) OF THIS ARTICLE 12
 34 POINTS

1 27-101.

2 (V) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF § 16-205.1(O) OF THIS
3 ARTICLE IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR
4 NOT MORE THAN 1 YEAR OR BOTH.

5 **Article - Criminal Procedure**

6 6-220.

7 (c) Notwithstanding subsections (a) and (b) of this section, a court may not
8 stay the entering of judgment and place a defendant on probation for:

9 (1) a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article,
10 if within the preceding 5 years the defendant has been convicted under or has been
11 placed on probation under [that section] EITHER OF THOSE SECTIONS after being
12 charged with a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2001.